CIVIL ACTIONS
Title 2

Chapter 1: General Provisions; Traditional Tribal Law
General Provisions

2.0 Prior Enactments or Amendments, Effect

Any prior enactments or amendments of Title 2, Civil Actions shall have no further force and effect as of the date of the enactment of the amendments to Title 2. These amendments to Title 2 shall apply to all cases that have not been resolved by an agreed upon settlement or a final judgment not subject to an appeal.

2.1.01 Procedure to Be Applied

Compliance with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, or the California Code of Civil Procedure is not required in Tribal Court proceedings. Federal or State rules and Federal or State case law may be cited to as persuasive argument for purposes of analysis in areas where Federal or State rules are analogous to Tribal rules and Tribal case law, but will not be relied upon as precedent requiring that the Court adopt additional rules that are not a part of this Code.

2.1.02 Standard of Proof

The complainant in a civil case shall have the burden of proving its case by the preponderance of the evidence, i.e., the greater weight of evidence, except in such cases where it is established by ordinance that the burden of proving his/her case is by clear and convincing evidence.

(a) In criminal or quasi-criminal actions, or if otherwise established by ordinance, the burden of proof shall be beyond reasonable doubt.

2.1.03 Course of Proceedings

(a) Tribal Law and Custom. The Tribal Court shall follow the Tribal Rules of Court unless the party's stipulate to resolving the complaint by tribal law and custom. The parties must first stipulate (1) to what they believe to be the traditional custom of settling disputes is, (2) what the traditional law governing the dispute is, and (3) must agree to abide by the decision rendered by the person or persons that they determine to be the traditional finder or finders of law and fact. The Tribal Court Judge may act as a mediator in such a proceeding if all the parties request that the Judge do so. The parties may also stipulate to a mediator of their choosing.

(b) Tribal Court Procedure. If the parties do not stipulate to a traditional custom for settling disputes but still agree that the dispute is governed by traditional law, the Court will follow Tribal Court procedure as set forth in these Rules of Court.

Traditional Tribal Law

2.1.04 Traditional Tribal Law

The traditional law of the Hoopa Valley Tribe is the common law of the Tribe tantamount to the written law of the Tribe and will be applied in all situations where it is relevant to the issues raised in an action before the Court. The Court will first look to the laws adopted by the Tribe and to the Constitution and Bylaws of the Hoopa Valley Tribe. If no written Tribal law applies to a cause of action or the issues involved in an action, the Court will look to the Tribe's traditional law and if it finds the traditional law to be applicable in settling the dispute, will base its decision on traditional Tribal law.

(a) The Tribal Court may be used to facilitate a traditional form of dispute resolution, akin to a mediated settlement. The parties may identify a [go-between], to mediate between the parties until a stipulated agreement is reached. The Court will then issue an order containing the stipulated agreement.

(b) Where the parties choose to follow the civil procedures of Title 2, in any dispute, claim, or action, in which a party asserts that traditional Tribal law governs the outcome, the Court must first determine what the traditional law is. If the traditional Tribal law has been acknowledged by a legal writing of the Tribe the Court will apply the written law.

(1) Evidence that a traditional law is written includes written reference to a traditional law, right, or custom in a Tribal resolution, motion, order, ordinance or other document acted upon by the Tribal Council. Anthropological writings or publications, and personal writings are not evidence that the traditional law is written, but may be presented as persuasive or supporting evidence that the traditional law or custom exists.

(c) In any dispute, claim, or action, in which a party asserts that traditional Tribal law governs the outcome, and the Court finds that the traditional law is unwritten, the Court will hold a hearing to determine what the traditional law is.

(1) The parties may stipulate to what the traditional law to be applied is. If the parties stipulate to the traditional Tribal law, the Court will then hold an evidentiary hearing to determine the facts of the case.

(2) If the parties do not stipulate to the traditional Tribal law, the parties may stipulate to a list of neutral Tribal members to act as expert witnesses, whose testimony will be relied upon to determine the traditional Tribal law.

(A) If the parties do not stipulate to such a list, each party shall be allowed to call their own expert witnesses. The Court will determine how many expert witnesses each party may call to testify except that each party shall be allowed to call the same number of expert witnesses.

(B) Each party shall submit a list of Tribal elders' names that they wish to call as expert witnesses. The opposing party will have the right to *voir dire* the witnesses to determine if they are, in fact, knowledgeable of traditional Tribal law.

(C) Each party shall also submit to the Court a list of Tribal members' names that the party believes to be neutral and impartial, and knowledgeable of traditional Tribal law. The Court shall select from the submitted list names of individuals to act as expert witnesses for the Court.

(3) The Court may, but is not required to, accept recommendations of the parties before determining the neutral and impartial expert witnesses that will testify before the Court. The Court will determine how many neutral and impartial witnesses may testify except that the number will not exceed the number of witnesses that each party will be allowed to call as expert witnesses. The parties will have the right to *voir dire* the witnesses to determine if they are, in fact, knowledgeable of traditional Tribal law.

(d) After the expert witnesses have been determined, the parties will submit to each other and the Court a list of questions to be asked of each of the witnesses. A party may object to any question submitted by an opposing party. The Court will then determine which questions will be asked of each of the expert witnesses. The Court shall have the discretion to ask its own questions of the expert witnesses.

(e) After hearing the expert witness's testimony the Court will issue a Conclusion of Law in which the Court will state what it has found to be the traditional Tribal law. If either of the party's object to the Court's conclusion, the Court will meet in closed session with all of the expert witnesses. The Court will then call for a discussion of the Conclusion of Law by the expert witnesses. Following this discussion, the Court may re-issue or amend and re-issue the Conclusion of Law, or repeat the process as defined herein, selecting different neutral and impartial witnesses and/or a different set of questions to be asked of the expert witnesses.

(f) Once the Court has determined what the traditional law to be applied is, the Court will set a date for a conference hearing pursuant to Title 3, Rule 12 (b).

Chapter 2
Parties; Joinder of Claims; Persons

Parties

2.2.01 The Capacity to Sue and Be Sued

The capacity of an individual, a tribal entity, or a corporation, to sue and be sued shall be determined by the law of the Hoopa Valley Tribe and applicable federal law.

2.2.02 Real Party in Interest

Every action shall be prosecuted in the name of the real party in interest. A "Real Party in Interest" refers to (1) the plaintiff that has standing to bring the action, i.e., the person who has been, or will be, harmed by an act of the defendant; (2) the party that can provide the relief sought by the plaintiff; or (3) a party that can show that he will be harmed directly should the Court decide in favor of the plaintiff.

[See Tribal case law for precedent. FRCP 17 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Joinder of Claims, Persons

2.2.03 Joinder of Claims and Remedies

A party asserting a claim to relief may join, either as independent or as alternate claims, as many claims, legal, or equitable, as the party has against the opposing party.

[See Tribal case law for precedent. FRCP 18 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.2.04 Joinder of Persons Needed for Just Adjudication (Necessary Party)

A person shall be joined as a party in an action, if (1) complete relief cannot be accorded in his absence or, (2) if the person claims an interest that cannot be protected in his absence, or (3) if the persons already parties would be subject to incurring the obligations of a person not a party to the action.

[See Tribal case law for precedent. FRCP 19 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) All persons may join in one action as plaintiffs if they assert any right of relief jointly.

(b) Persons having claims against the plaintiff may be joined as defendants and required to interplead if their claims may expose the plaintiff to double or multiple liability. Such claims do not have to be of common origin or identical, they may be adverse to and independent of other parties' claims. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim.

[See Tribal case law for precedent. FRCP 22 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(c) Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may impair or impede the

applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

[See Tribal case law for precedent. FRCP 19 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(d) The Court may order substitution of parties if a party dies, or if a party becomes incompetent. In a case of any transfer of interest, the action may be continued by or against the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted or joined with the original party. Service of the motion shall be made with this motion.

(e) Misjoinder is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion by any party or of its own initiative at any stage of the action and on such terms as are just.

[See Tribal case law for precedent. FRCP 21 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Chapter 3
Commencement of Action; Service of Process; Pleadings, Motions and Orders; Time

Commencement of Action; Service of Process

2.3.01 Commencement of Action

(a) A civil action is commenced by filing a complaint with the court which conforms to these Rules and a copy to be served to the defendant, or if there is more than one defendant, the number of copies necessary to serve all the defendants named in the action. Upon payment of the filing fee the Clerk shall accept the original complaint for filing.
(b) A civil employment action brought pursuant to 1 Hoopa Valley Tribal Code § 1.1.04(f) shall name the Hoopa Valley Tribe as the defendant.
(c) The filing fee for commencement of a civil action is $25. The Hoopa Valley Tribe shall not be required to pay any filing fees to the Tribal Court.
(d) Upon request, the Chief Judge may waive court fees and costs for a party who is unable to pay court fees and costs.

2.3.02 Filing with the Court Defined

Filing of all Court documents shall be in the Clerk's office. Filing at any other location than the Hoopa Valley Tribal Court is of no force or effect.

(a) Filing shall be effective only upon presentation in the office of the Clerk of the Hoopa Valley Tribal Court Filing in any location other than those provided by this section is ineffective.

(b) Filing by Fax. Electronic transmission of a document via facsimile machine, i.e., by "fax," does not constitute filing. No documents may be transmitted directly to the clerk by fax for filing. Any documents so transmitted shall be rejected and not filed. Filing is complete when the document is filed with the Clerk.

(1) A third party may file fax-transmitted pleadings on behalf of the parties or their counsel. The third party acts as the agent of the filing party and not as an agent of the court. A document shall be deemed to be filed when it is submitted by the third party agent, received in the Clerk's office, and filed with the Clerk.

(2) All fax-transmitted pleadings presented for filing shall be on white opaque, 8-1/2 x 11" paper. The image of the original manual signature on the fax copy will constitute an original signature for all court purposes. The original shall not be substituted, except by court order. The original shall be maintained by the party originating the document, the spokesperson or attorney of record, for a period no less than the maximum allowable time to complete the appellate process.

(3) The sending party is required to maintain a transmission record in the event fax filing later becomes an issue.

(c) Late filing of material may be permitted by order of Court, providing good cause is shown.

2.3.03 Summons

Upon filing the complaint, the court clerk will issue a summons to the plaintiff for service to the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

2.3.04 Service

The plaintiff is responsible for service of a summons and complaint. The plaintiff shall cause to be personally served on the defendant(s) a copy of the summons and complaint, and shall instruct the person serving the summons and complaint on the defendant(s) to fill out a proper proof of service. The original of the proof of service shall be filed with the Court Clerk after service.

(a) Effective Service

The proof of service must be returned to the Court Clerk within sixty (60) days of its issuance or the action will be dismissed as a non-suit. The Court may extend that time an additional thirty (30) days upon a showing of good cause by the plaintiff.

(b) Such service may be made by means of certified mail, return receipt requested, only where personal service is not possible or where the defendant resides outside the exterior boundaries of the Hoopa Valley Indian Reservation.

(c) Publication

Upon a showing by the complainant to the Tribal Court that diligent efforts were made to serve the complaint on the defendant and that for sufficient reasons service could not be made, the Judge may allow service to be made by posting copies of the notice and complaint in two public places on the Reservation for three weeks and by publication of a copy of the notice and complaint once a week for three consecutive weeks in a newspaper of general circulation in the vicinity of the Reservation. In such case the return date shall be not less than 30 days from the date of first publication.

(d) Service in Employment Termination Actions

The plaintiff in a civil employment action brought pursuant to 1 Hoopa Valley Tribal Code § 1.1.04(f) shall be responsible for service of a summons and complaint upon each of the following: The Hoopa Valley Tribal Chairman, the Office of Tribal Attorney, the applicable department or entity director, and the Director of Personnel. Until a complaint and summons is served upon each of these entities, service shall not be complete.

2.3.05 Actions Initiated by the Hoopa Valley Tribe

(a) Where a citation is used, it shall include information which will accurately notify the defendant of the facts which allegedly constitute the offense(s) and the Rule(s) allegedly violated. Where the Tribe uses a complaint to initiate an action, the complaint shall conform to the requirements of section 2.3.01.

(b) Service of Citations

Citations shall be served on the defendant preferably in person; by mail only where personal service is not practical. In either event the original proof of service shall be filed with the Court along with the citation or a copy thereof.

2.3.06 Service of Subsequent Papers

Defendants may serve papers on plaintiffs at the address shown by the plaintiffs on the summons and complaint. After such service by defendant, plaintiffs may serve defendants at the address the defendant provides on the defendant's filings. Where the defendant fails to provide a written response to the complaint within thirty (30) days, then plaintiff shall serve subsequent papers by serving defendant at his or her last known address, and to the extent possible, at the place of physical service.

Pleadings, Motions and Orders

2.3.07 Pleadings Allowed

There shall be a complaint and an answer; if there is a counterclaim, a reply to the counterclaim; if a cross-claim, an answer to the cross-claim. If a third party who is not an original party is summoned, then a third party complaint and if the third party is served a third party answer. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

2.3.08 Format and Contents

All papers presented for filing shall be on white opaque, 8-1/2 x 11" paper. Typewriting is preferred, but handwritten filings will be accepted provided they are clear and legible and of such quality that legible photocopies can be made. The clerk shall accept all papers presented for filing, but papers not in substantial compliance with these rules may be rejected by the Judge of the Court.

(a) Every pleading will have a caption stating the name of the court, the title of the action, the file number, and a designation, i.e., complaint, petition, answer, motion, counterclaim, cross-claim, third party complaint, etc. The original complaint should name all the parties. Subsequent pleadings need only name the first party on each side with the appropriate indication of the other parties.

(b) Each averment made in a pleading shall be simple, concise, and direct. No technical forms of pleading or motions, however, are required.

(c) Each claim founded upon a separate transaction or occurrence and each defense shall be stated by the pleader in a separate numbered paragraph whenever a separation facilitates the clear presentation of the matters set forth. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in a motion. A copy of any written instrument which is an exhibit to a pleading is a part of the pleading for all purposes.

(1) Averments in a pleading to which a responsive pleading is required, are admitted when not denied in the responsive pleading. Responsive pleadings include an answer, a reply, a brief in opposition to a motion, a respondents brief, etc.

[See Tribal case law for precedent. FRCP 8(d) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.3.09 Pleading Special Matters

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued, or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with Hoopa Valley Tribal Law.

(e) Judgment. In pleading a judgment or decision of a foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(h) Employment Termination Actions Brought Pursuant 1 H.V.T.C. § 1.1.04(f)
In an action brought pursuant to 1 Hoopa Valley Tribal Code § 1.1.04(f) herein, the plaintiff shall state with particularity in the complaint the following: the date and time of the event complained of; the name of the supervisor and any other employees involved in the matter; any relevant Tribal codes alleged to have been violated and the specific action that violated the relevant tribal codes; the dates and times of all consultations with supervisors and human resources personnel and any other employee or tribal official related to this matter; and the specific relief requested.

[See Tribal case law for precedent. FRCP 9 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.3.10 Discretion to Strike

The Court may, upon motion, or at any time in its discretion, and upon terms it deems proper:

(a) Strike out any irrelevant, false, or improper matter inserted in any pleading.
(b) Strike out all or any part of any pleading not drawn or filed in conformity with these rules.

[See Tribal case law for precedent. CCPC § 436 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.3.11 Address; Signature Required

All papers presented for filing shall also contain the name, address, and telephone number of the responsible attorney, spokesperson, or person appearing on his or her own behalf.

(a) All papers must be signed by the party or spokesperson or attorney representing the party. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. Such signature certifies that the signer has read the pleading, motion, or paper submitted, that the contents are true to the best of his or her knowledge, and that the pleading, motion, or paper is not being submitted for an improper purpose. The pleadings need not be verified by affidavit.

[See Tribal case law for precedent. FRCP 7,8 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.3.12 Complaint

A pleading which sets forth a claim for relief shall contain:

(a) a short and plain statement of the grounds upon which the Court's jurisdiction depends, a short and plain statement of the claim showing that the pleader is entitled to relief, and, a demand for judgment for relief the pleader seeks.

(b) or be accompanied by, a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced.

2.3.13 Statute of Limitations

(a) No complaint shall be filed in a civil action unless the events shall have occurred within a three year period prior to the date of the filing of the complaint.

(b) Notwithstanding subsection (a) above, no complaint shall be filed in an action brought pursuant to § 1.1.04(f) unless the complaint is filed within 30 days of the date of the employee's termination.

2.3.14 Answer

An answer to a complaint shall be filed with the Court within thirty (30) days after service of the summons and complaint. The answer shall contain:

(a) a general or specific denial of each material allegation of the complaint or petition denied by the defendant; and;

(b) a statement of any new matter constituting a defense, counterclaim, or setoff, in ordinary and concise language and without repetition.

2.3.15 Counter Claim and Cross-Claim

A party may counterclaim any claim the party has against an opposing party arising out of the same transaction or occurrence that is the subject of the opposing party's claim and does not require the presence of third parties of whom the Court cannot acquire jurisdiction. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of the original claim, counterclaim or any property that is the subject matter of the transaction.

[See Tribal case law for precedent. FRCP 13 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) When a pleader fails to make a counter-claim or cross-claim, the pleader may by leave of court set up the counter-claim or cross-claim by amendment.

2.3.16 Third Party Practice

At any time after commencement of the action a defending party, as a third party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third party plaintiff (i.e., the defending party) for all or part of the plaintiff's claim against the third party plaintiff (defending party).

[See Tribal case law for precedent. FRCP 14 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) The person served with the summons and third party complaint shall assert any defenses, counterclaims and cross-claims as provided in subsection 2.4.13.

(b) Leave of court to make service on a third party is not required if the third party files the third party complaint within ten days of filing the original answer; otherwise the third party plaintiff must obtain leave of court by noticed motion and must notice all parties to the action.

(c) A third party defendant may proceed against any person not a party to the action that is or may be liable to the third party defendant for all or part of the claim made against him. A plaintiff may bring in a third party when a counter-claim is asserted against him.

2.3.17 Amended & Supplemental Pleadings

A party may amend his or her pleading at any time before a responsive pleading is served or, where no responsive pleading is permitted and the action has not been placed on the calendar the party may amend at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the opposing party; and leave may be given when justice so requires.

[See Tribal case law for precedent. FRCP 15 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.3.18 Motions and Other Papers

A motion is a request for an order. A request to the Court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds for the motion, and state the relief or order sought. The requirement of writing is fulfilled if the motion is stated in the written notice of the hearing of the motion. Motions must be in the proper form as provided for by subsection 2.4.08, and must be signed in accordance with subsection 2.4.09.

2.3.19 RESERVED

[former §2.3.19 deleted]

Time

2.3.20 Time

Whenever a Rule or an order of the Court requires that an action be taken within a certain number of days, the time computation does not include the day the order is given, but begins as of the next following day and runs until the last day specified, unless the last day falls on a weekend or a Tribal Holiday, in which event the due date is the next Court work day.

[See Tribal case law for precedent. FRCP 6 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) "Days" means *calendar* days unless a rule specifically states otherwise.

2.3.21 Response to Complaint

An answer or other response to a complaint or cross-complaint is to be filed, and copies served on all other parties, with thirty (30) days of service.

2.3.22 Response to a Motion

Any response to a motion is to be filed, and copies served on all other parties, within fourteen (14) days of service. A reply to the response shall be served and filed by the moving party not less than five (5) days preceding the noticed or continued date of hearing, unless the Court for good cause orders otherwise.

2.3.23 Notice of Hearings and Trials

Notice of hearings and trials is to be provided at least five (5) days in advance if the parties are personally served, and ten days if notice is delivered by mail.

(a) When a time limit is counted from the time that notice is delivered to a person by mail, it shall be presumed that delivery takes place five days after notice is mailed.

2.3.24.1 The Court's Discretion

The Court may change time periods for good cause shown.

2.3.24.2 Ex Parte Application

In the absence of emergency or exigent circumstances, an application for an order shall not be made ex parte unless it appears by affidavit or declaration that:

(a) No less than 24 hours before the application, the party informed the opposing party or the opposing party's spokesperson when and where the application would be made; and

(b) Good cause exists to grant the requested order.

Chapter 4: Motion Practice; Pretrial Proceedings; Discovery; Witnesses; Subpoenas

Motion Practice

2.4.01 Motion Defined

A motion is a request to the Court for an order, which shall be made by written motion before trial wherever possible. A motion made verbally may be allowed at trial, at the discretion of the court if the court finds that in the interest of justice it is proper to do so.

(a) The motion shall specifically state what order is sought, and the reasons why the Court should grant the request. A written memorandum of legal authority in support of the motion is encouraged but is not required.

2.4.02 Service

A Proof of Service must be filed with the notice of motion stating that copies of the same were mailed or delivered to the opposing party.

2.4.03 Opposition

The opposing party shall have fourteen (14) days from service in which to respond to the motion, plus five additional days if service is by mail. A reply to the opposition shall be served and filed by the moving party not less than five (5) days preceding the noticed or continued date of hearing, unless the Court for good cause orders otherwise

2.4.04 Motion for Summary Judgment

(a) Any party may move for Summary Judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after sixty (60) days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance at the Court with or without notice and upon good cause shown may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least twenty-eight (28) days before the time appointed for hearing. However, if the notice is served by the mail the required twenty-eight day period of notice shall be increased by five days if the place of address is within the Hoopa Valley Indian Reservation or the State of California. The required twenty-eight day period shall be increased by ten (10) days if the place of the address is outside of the State of California but within the United States.

(b) Any motion for Summary Judgment shall be heard no later than thirty (30) days before the date of trial, unless the Court for good cause shown orders otherwise.

(c) Opposition to the motion shall be served and filed not less than fourteen (14) days preceding the noticed or continued date of hearing, unless the Court for good cause, orders otherwise. The opposition where appropriate shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. Opposition papers shall include a separate statement which responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts which the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the Court's discretion, for granting the motion. The motion for summary judgment shall be supported by affidavits, declaration, admissions, answers to interrogatories, depositions and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement, may in the Court's discretion constitute a sufficient ground for denial of the motion.

(d) Reply. In a reply to the opposition shall be served and filed by the moving party not less than five (5) days preceding the noticed or continued date of hearing, unless the Court for good cause orders otherwise.

(e) The motion for Summary Judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact, the Court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the Court, and all inferences reasonable deducible from the evidence, except summary judgment shall not be granted by the Court based on inferences reasonable deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material facts.

(f) Supporting and opposing Affidavits or Declarations shall be made by any person on personal knowledge, shall set forth admissible evidence and shall show affirmatively that the affiant is competent to testify to the matter stated in the affidavits or declarations. Any objections based on the failure to comply with the requirements of this subdivision shall be made at the hearing or shall be deemed waived.

(g) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defenses thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or there is no merit to a claim for damages as specified in this Title, or that one or more defense either owed or did not owe a duty to a Plaintiff or Plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(h) Upon the denial of a motion for summary judgment or summary adjudication, on the ground there is a triable issue as to one or more material facts, the Court shall, by written order, specify one or more material facts raised by the motion as to which the Court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion which indicates that a triable controversy exists. Upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the Court shall, by written or oral order specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of, and if applicable in opposition to the motion which indicates that no triable issue exists. The Court shall also state its reasons for any other determination. The Court shall record this determination by written order.

(i) In actions which arise out of an injury to the person or to property, when a motion for summary judgment was granted on the basis that the Defendant was without fault, no other Defendant during trial, over Plaintiff's objection may attempt to attribute fault to or comment on the absence or involvement of the Defendant who was granted the motion.

(j) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of an order pursuant to this section except the entry of summary judgment, a party may within ten (10) days after service upon him or her of a written notice of entry of the order, petition the Hoopa Valley Tribal Court of Appeal for a preemptory writ. If the notice is

served by mail, the initial period within which to file the petition shall be increased by five (5) days if the place of address is within the Hoopa Valley Indian Reservation or the State of California. If the notice is served by mail, the initial period within which to file the petition shall be increase by ten (10) days if the place of address is outside the State of California. If the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two (2) calendar days. The Tribal Court may, for good cause shown, and prior to the expiration of the initial period, extend the time for one additional period not to exceed ten (10) days.

(k) Case not fully adjudicated on motion. If on motion under this Rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts are actually and in good faith converted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specific shall be deemed established, and the trial shall be conducted accordingly.

(l) Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(m) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(n) Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

[See Tribal case law for precedent. FRCP 56, CCP § 437c, may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.05 Motion Hearings Defined

A motion hearing is a pretrial proceeding and takes place when a party has asked the Court to order that something be done in connection with a pending case. Hearings on motions are not automatic. See subsection 2.4.4. Hearings will be set when oral argument would be helpful to the Court and on request of a party or parties or the Court's own motion. Motions may be filed to add or eliminate parties, to amend pleadings, to request a jury trial, to prepare or simplify a case for trial, or to request judgment as a matter of law in the absence of material disputed issues of fact pursuant to subsection 2.4.4.

2.4.06 Motion Hearing

Unless requested by either party or ordered by the Court, a hearing on the motion will not be held. In the event a hearing is desired, a hearing date can be requested in writing or by contacting the Court prior to filing the notice. Hearings will be set as soon as practicable.

Pretrial Proceedings; Disclosure

2.4.07 Pretrial Conference Hearings Defined

The purpose of a conference hearing is to simplify the issues, eliminate frivolous claims or defenses, to discourage wasteful pretrial activities, and to improve the quality of trial through preparation by discussing such things as settlement prospects, facts and issues not in dispute, evidence to be presented, appropriate witnesses, and jury trial requests. Pretrial conferences are also necessary for planning for discovery. To encourage honest discussion, nothing said at a conference hearing shall be admitted in evidence. Conference hearings may, in the exercise of the Court's discretion, on request of a party or on the Court's own motion, be held off the record.

2.4.08 Pretrial Conference Hearing; Discovery Plan

Conference hearings may be scheduled on a written request of one or more parties, or on the Court's own initiative. If discovery is sought by any party, a pretrial conference is required for the purpose of developing a discovery plan. If such a hearing is scheduled, the parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, as soon as practicable and at least 14 days before a scheduling conference is held.

(a) No formal discovery, including discovery from non-parties, shall be initiated by any party until after the meet and confer session pursuant to section 2.4.08, except by stipulation by all named plaintiffs and all named defendants who have been served, or upon order of the court.

(b) Unless otherwise ordered, no later than 75 days after service of the summons and complaint upon all named defendants, lead trial counsel shall meet n person and confer for the purposes specified in this section.

[See Tribal case law for precedent. FRCP 16; 26(f), may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.09 Required Disclosures

(a) Initial Disclosure. A party shall, without awaiting a discovery request, provide to the other parties

(1) the name, address and telephone number of each individual likely to have discoverable information relevant to the disputed facts;

(2) a copy of, or a description and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the disputed facts alleged with particularity in the pleadings;

(3) a computation of any damages claimed and making available for inspection and copying the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based.

(4) any insurance agreement which may be used to satisfy part or all of a judgment which may be entered in the action.

(b) Disclosure of Expert Testimony. A party shall disclose to other parties the identity of any person who may be used at trial to present expert testimony, and;

(1) With respect to a witness who is retained or specially employed to provide expert testimony, this disclosure shall be accompanied by a written report prepared and signed by the witness, containing a complete statement of all opinions to be expressed and the basis and reasons therefore the data and other information considered by the witness in forming the opinions; any exhibits to be used to summarize or in support of the opinions; the qualifications of the witness; the compensation to be paid for the study and testimony; and a list of any other cases in which the witness testified as an expert.

(2) These disclosures shall be made at the times and in the sequence directed by the court.

[See Tribal case law for precedent. FRCP 26(b) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(c) Pretrial Disclosure. a party shall provide to the other parties the following information regarding the evidence that it may present at trial:

(1) the name, address, and telephone number of each witness; separately identifying those which the party expects to present and those which the party may call if the need arises;

(2) the designation of those witnesses whose testimony is expected to be presented by means of a deposition, and a transcript of the pertinent portions of the deposition testimony;

(3) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

(d) Form of disclosure; filing. All disclosures under this subsection shall be made in writing, signed, served and promptly filed with the court.

(e) Signing. Every initial or pretrial disclosure made pursuant to (a)(1) or (a)(3) shall be signed by the party, spokesperson or attorney of record. The signature constitutes a certification that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

Discovery

2.4.10 Discovery Defined

In general, parties may obtain discovery of any matter, not privileged, which is relevant to the subject matter involved in the pending action, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information need not be admissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

2.4.11 Methods to Discover Additional Matter

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission.

2.4.12 Timing and Sequence of Discovery

A party may not seek discovery from any source before the parties have met and conferred as required by subsection 2.4.7 Unless the court upon motion, for the convenience of the parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay another party's discovery.

2.4.13 Depositions Upon Oral Examination

A person who desires to perpetuate testimony regarding any matter within the scope of subsection 2.4.8 may take the testimony of any person, including a party:

(a) Without Leave of Court. A person may take testimony without leave of court. The party desiring to take the deposition upon any person shall give at least 10 days notice in writing

to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined.

(1) Content of Notice. The deposition of notice shall state all of the following:

(a) the address where the deposition will be taken;

(b) the date of the deposition, and the time it will commence;

(c) the name of each deponent, and the address and telephone number if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs;

(d) the specification with reasonable particularity of any materials or category of materials to be produced by the deponent; and

(e) any intention to record the testimony by audio tape or video tape, in addition to recording the testimony by the stenographic method as required by this section.

(2) Scheduling of Deposition. An oral deposition shall be scheduled for a date at least ten (10) days after service of the deposition notice. If, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least twenty (20) days after issuance of that subpoena.

(b) By Order of Court. A person may file a motion seeking an order authorizing the petitioner to take the depositions of the persons to be examined. The petition shall contain the names of the persons to be examined, the facts that the petitioner desires to establish, and the substance of the testimony that the petitioner expects to elicit.

(1) The moving party shall then serve a notice upon each person named in the motion and all other parties to the action, along with a copy of the motion for the order described in the motion. A notice by a party deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The notice shall state the method by which the testimony shall be recorded. The notice shall be served in the manner provided in subsection 2.3.04, for service of summons.

(c) A deposition shall be conducted by an officer of the court designated under subsection 2.4.16, and shall begin with the statement on the record (a) the officer's name and address; (b) the date, time, and place of the deposition; (c) the name of the deponent; (d) the administration of the oath or affirmation of the deponent; and (e) an identification of all persons present. The appearance or demeanor of deponents shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

[See Tribal case law for precedent. FRCP 30 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(d) A party may in the party's notice and subpoena name as the deponent a public or private corporation, or a partnership or association, or a Tribal agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify.

(e) Examination and Cross-examination; Record and Oath; Objections. Examination and cross-examination of witnesses are to be in accordance with Chapter 5, Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall record the testimony of the witness. All objections made at the time of the examination shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope to the party taking the deposition and the party shall transmit them to the officer who shall propound them to the witness and record the answers verbatim.

(f) Any party may arrange for a transcription to be made from the recording of a deposition. The additional record or transcript shall be made at that party's expense unless the court orders otherwise.

(g) Submission to witness; changes; signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefore; and the deposition may then be used as fully as though signed unless on a motion to suppress unless the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(h) Certification and filing by officer; exhibits; copies; notice of filing; preservation of notes and tapes of depositions.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Tribal Court.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (a) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (b) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(4) The officer shall preserve and retain for period of 10 years all original notes and stenographic tapes taken or recorded by him during deposition, which shall be retained by the officer in such place and manner as to ensure their availability to the court or any party upon request.

2.4.14 Depositions Upon Written Questions

A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court, or by leave of court. The attendance of witnesses may be compelled by the use if subpoena provided in subsection 2.4.22. A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them. Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. The court may for cause shown enlarge the time.

[See Tribal case law for precedent. FRCP 31 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attached thereto the copy of the notice and the questions received by the officer.

(b) When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

2.4.15 Use of Depositions in Court Proceedings

Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any purpose permitted under Chapter 5, Rules of Evidence.

(a) The deposition may be used by any party for any purpose if the court finds:

(1) that the witness is dead; or

(2) that the witness is not residing or domiciled within the exterior boundaries of the Hoopa Valley Indian Reservation and cannot be compelled to appear, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(3) that the party is unable to testify because of age, illness, infirmity, or imprisonment; or

(4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(5) upon application and notice that such exceptional circumstance exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

[See Tribal case law for precedent. FRCP 32 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.16 Persons Before Whom Depositions May Be Taken

Depositions shall be taken before a person appointed by the court. A person so appointed shall be an officer of the court having power to administer oaths and take testimony. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

[See Tribal case law for precedent. FRCP 28 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.17 Stipulations Regarding Discovery Procedure

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

[See Tribal case law for precedent. FRCP 29 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.18 Interrogatories

Any party may serve upon any other party written interrogatories not exceeding 25 in number to be answered by the party served, or if the party served is a tribal entity, or a public or private corporation or a partnership or association, by officer or agent, who shall furnish such information as is available to the party.

[See Tribal case law for precedent. FRCP 33 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.19 Supplementation of Disclosures and Responses

A party who has made a disclosure or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response if the party learns that in some material respect the information disclosed is incomplete or incorrect and if such information has not otherwise been made known to the other parties during the discovery process.

[See Tribal case law for precedent. FRCP 26(e) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.20 Limits to Discovery

The court may limit the number of depositions and interrogatories and the number of requests if it determines that the discovery sought is unreasonably cumulative, or duplicative, or is obtainable from some other source that is more convenient, less burdensome or less expensive; the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or the burden or expense of the proposed discovery outweighs its likely benefit. The court may act on its own initiative after reasonable notice or pursuant to a motion.

[See Tribal case law for precedent. FRCP 26(b)(2) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) Trial Preparation; Materials. A party may obtain discovery of documents and tangible things prepared in anticipation of litigation or for trial by or for another party only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable

(b) Trial Preparation: Experts. A party may depose any person identified as an expert whose opinions may be presented at trial.

(1) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness or upon showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(2) Unless manifest injustice would result the court shall require that a party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subsection and pay to the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Claims of Privilege. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(d) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court on matters relating to a deposition may make an order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense. The order shall include one or more of the following: (1) that the disclosure or discovery not be had, (2) that the disclosure or discovery may be had under specified terms and conditions including a designation of time and place, (3) that the disclosure or discovery be limited to a certain method and/or to certain matters.

[See Tribal case law for precedent. FRCP 26(c) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.21 Production of Documents/Entry Upon Land for Inspection

Any party may serve on any other party a request:

(a) to produce or to permit inspection of any designated documents which contain matters within the scope of subsection 2.4.8, and which are in the custody or control of the party upon whom the request is served;

(b) to permit entry upon designated land or other property in the possession or control of the party being served for the purpose of inspection .

[See Tribal case law for precedent. FRCP 34 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(1) the request shall set forth the items or property to be inspected. The request shall specify a reasonable time, place, and manner of making the inspection.

(2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request. The court may allow a shorter or longer time.

The response shall state, with respect to each item or category, that inspection, production and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection or production as requested.

2.4.22 Physical and Mental Examination

When the mental or physical condition of a party or person is in controversy, the Court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner.

[See Tribal case law for precedent. FRCP 35 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.23 Request for Admission

A party may serve upon any other party a written request for the admission of the truth of any matters of the pending action [that relate to statements or opinions of fact or of the application of law to fact,] including the genuineness of any documents described in the request.

(a) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his counsel. If objection is made, the reasons therefore shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of this title regarding sanctions, deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objection. Unless the court determines that an objection is justifies, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 2.4.24 apply to the award of expenses incurred in relation to the motion.

(b) Failure to Respond. Should the responding party fail to respond within the time periods specified in Section A above, all requested information is deemed admitted and the requesting party is not required to move the Court for an order deeming the requested material admitted.

(c) Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be promoted thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

[See Tribal case law for precedent. FRCP 36 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.24 Failure to Cooperate in Discovery: Sanctions

If a deponent fails to be sworn or to answer a question after being directed to do so by the Court, the failure may be considered a contempt of court.

(a) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Motion. If a deponent fails to answer a question propounded or submitted pursuant to this Title or a corporation or other entity fails to make a designation under this Title or a party fails to answer an interrogatory submitted under this Title, or if a party, in response to a request for inspection submitted under this Title, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to this Title.

(2) Evasive or incomplete answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(3) Award of expenses of motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or counsel advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including counsel fees, unless the court

finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the counsel advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including counsel fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order.

(1) Sanctions by court. If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of court.

(2) Sanctions by court. If a party or an officer, director, or managing agent of party or a person designated to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision A of this rule the court may make such orders in regard to the failure as are just, and among others the following:

(a) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing matters in evidence.

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(d) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(e) Where a party has failed to comply with an order under this Title requiring him to produce another for examination, such orders as are listed in paragraph (a), (b), and (c) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the counsel advising him or both to pay the reasonable expenses, including counsel fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under this Title, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable counsel fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to section __, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under this Title, after proper service of the request, the court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (a), (b), and (c) of subdivision B(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the counsel advising him or both to pay the reasonable expenses, including counsel fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provide by section.

[See Tribal case law for precedent. FRCP 37 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.25 Enforcement Proceedings

In enforcement proceedings initiated by the Hoopa Valley Tribe, the defendant is entitled to be given copies of all relevant police reports at least five (5) days prior to the date of first court appearance by mailing of such documents to said defendant from the Tribe. The Tribe's representative may request a protective order. The defendant and Tribe's representative shall exhaust all settlement possibilities prior to invoking the participation of the Court in discovery matters.

(a) In enforcement proceedings initiated by the Hoopa Valley Tribe, at least five (5) days prior to trial, the prosecutor shall notify the defendant of the names of persons who will testify. Others may testify at the date of the trial only upon a showing of good cause.

Witnesses; Subpoenas

2.4.26 Compelling Witnesses to Appear

Any party shall have the right to compel witnesses to appear in Court to testify on his or her behalf.

2.4.27 Subpoenas to Compel Appearance of Witnesses

A judge of the Tribal Court shall issue subpoenas for the attendance of witnesses at a trial or hearing, or at a deposition, for good cause shown, either on his/her own motion or on the request of the police chief or officer or any of the parties. The subpoena shall bear the signature of the issuing judge. Failure to obey such subpoena shall be deemed an offense as provided in this Code. Service of such subpoena shall be by a regularly acting member of the Tribal Police or by a person duly authorized by the Court for that purpose.

(a) Contents. Every subpoena shall state the name of the Hoopa Valley Tribal Court; the title of the action and it's civil action number; and command each person to whom it is directed to attend and give testimony or to produce and permit inspection an and copying of designated books. or documents or tangible things in the possession, custody or control of that person, or to permit the inspection of the premises, at a time and place therein specified. A command to produce evidence or permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(b) Service. All subpoenas shall be served by enforcement personnel except upon order of the Court. Personal service is preferred. In the event personal service is not possible, a copy shall be left at his/her residence or principal place of business in the care of a person of at least fourteen (14) years of age. The service fee is to be paid by the party requesting service and may be recovered as a cost of litigation.

(c) Proof of Service. A Proof of Service shall be filed with the Court specifying the person served, and the date, place, and manner of service.

(d) Failure to Appear; Contempt. Failure to appear after being properly served with a subpoena is punishable as a contempt of Court pursuant to Title 3, Rule 21.

(e) Fees. Each witness answering such subpoena shall be entitled to a fee of $15.00 a day for each day his/her services are required in Court, plus twenty (20) cents per mile for travel to and from the Court. The fees and expenses of witnesses in civil actions shall be paid by the party calling them. When expenses are to be paid by the Tribal Court, prior approval must be given before the expenses are incurred.

2.4.28 Subpoenas

A judge of the Tribal Court shall issue subpoenas for the attendance of witnesses wither on his/her own motion or on the request of the police chief or officer or any of the parties. The

subpoena shall bear signature of the issuing Judge. Failure to obey such subpoena shall be deemed an offense as provided in this Code. Service of such subpoena shall be by a regularly acting member of the Tribal Police or by a person duly appointed by the Court for that purpose.

Chapter 5: Rules of Evidence
Hearsay; Witnesses Testimony; Presenting Evidence; Rulings on Evidence

2.5.01 Relevance

All evidence that is relevant is admissible. Evidence which is not relevant is not admissible. "Relevant evidence" means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Evidence is relevant if it has a tendency to prove or disprove a material issue in dispute.

[See Tribal case law for precedent. FRE 401 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.02 Personal Knowledge

A witness is only permitted to testify to matters within his or her personal knowledge. This means that the witness must have personally observed the matter and must have a present recollection of his or her observation.

[See Tribal case law for precedent. FRE 602 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.03 Lay Opinion

Lay opinion s admissible only where it is based on the perception of the witness and where it is likely to help the finder of fact determine a fact in issue. In general, a lay witness may testify as to the general appearance and condition of a person.

[See Tribal case law for precedent. FRE 701 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.04 Unfair Prejudice

The Court has the discretion to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. Evidence is excludable if it is inflammatory, will result in confusion of the issues, will result in misleading the finder of fact, is cumulative and an undue consumption of time.

[See Tribal case law for precedent. FRE 403 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.05 Character Evidence

Character evidence is inadmissible in a civil suit unless character is directly at issue (e.g., defamation). Character evidence may be offered as substantive evidence to prove character when it is the ultimate issue in the case, or serve as circumstantial evidence of how the person probably acted.

[See Tribal case law for precedent. FRE 404 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.06 Proof of Character

Proof of character is made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

[See Tribal case law for precedent. FRE 405 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.07 Evidence of Habit

Evidence of the habit of a person or the routine of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

[See Tribal case law for precedent. FRE 406 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.08 Subsequent Remedial Measures, Compromise, Offers, Liability Insurance

Evidence of subsequent remedial measures, of compromise and offers of compromise, of offers or promises to pay medical expenses occasioned by an injury, or liability insurance, is not admissible to prove liability or invalidity of the claim or its amount, or whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of such evidence if offered for another purpose.

[See Tribal case law for precedent. FRE 407; 408; 409, may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.09 Inadmissibility of Pleas, Offers, and Related Statements

Evidence of a plea of guilty, or a plea of nolo contendre, or of an offer to plead guilty or nolo contendre to a crime charged or any other crime or any statements made in connection with, or relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

[See Tribal case law for precedent. FRE 410 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.10 Authentication and Identification

The requirement of authentication or identification of a document as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. The testimony of a subscribing witness is not necessary to authenticate a writing. Extrinsic evidence of authenticity is not required with respect to:

(a) A document bearing the seal purporting to be that of the Hoopa Valley Tribe, the United States, or any other State, territory or possession of the United States, or any other political subdivision, department, or agency thereof, and a signature purporting to be an attestation or execution.

(b) A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (a) hereof, having no seal, if a public officer having a seal and having official duties certifies under seal that the signer has the official capacity and that the signature is genuine.

(c) A copy of an official record or report, or of a document authorized by law to be recorded and filed which has been actually recorded and filed.

(d) Books, pamphlets, or other publications purported to be issued by public authority; printed material purporting to be newspapers or periodicals; documents acknowledged

[See Tribal case law for precedent. FRE 902 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.11 Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required.

(a) A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

(b) The original is not required if the original is lost or destroyed, unless the proponent lost or destroyed them in bad faith; or no original can be obtained by any available judicial process or proceeding; or the original is under the control of the party against whom offered and that party has been put on notice that the contents would be subject of proof at the hearing, and the party does not produce the original at the hearing.

(c) The contents of an official record or of a document authorized to be recorded of filed and actually recorded of filed, may be proved by copy, certified as correct or testified to be correct by a witness who has compared it with the original.

Hearsay

2.5.12 Hearsay

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing (an out of court statement), offered in evidence to prove the truth of the matter asserted. Hearsay is inadmissible unless there is an exception to the rule that allows the statement in.

[See Tribal case law for precedent. FRE 801 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) Non-hearsay; Admissions. The following statements are not hearsay and are admissible.

(1) Admissions by a Party Opponent: The statement offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or

(2) Judicial and Extrajudicial Admissions: The declarant testifies at the trial or hearing and is subject to cross-examination;

(3) Adoptive Admissions: a statement of which the party has manifested an adoption of belief or truth;

(4) Vicarious Admissions: a statement by a person authorized by the party to make a statement concerning the subject, or a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

(b) Reliability Exceptions. The Declarant need not be available at trial for admission of the following hearsay exceptions.

[See Tribal case law for precedent. FRE 803 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(1) Present State of Mind: A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition. Except to certain facts concerning the declarant's will, however, statements of memory or belief are not admissible to prove the truth of the fact remembered of believed.

(2) Excited Utterance: A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Present Sense Impression: A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(4) Then existing Mental, Emotional, or Physical Condition: A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(c) Unavailability Exceptions. The Declarant must be unavailable to testify at trial for the following exceptions to be admissible.

[See Tribal case law for precedent. FRE 804 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(1) Declaration Against Interest: A statement which was at the time of its making so far contrary to the declarant's pecuniary to proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the defendant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(2) Dying Declaration: A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause and circumstances of what the declarant believed to be impending death.

(3) Former Testimony: Testimony given by a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(4) Statements of Personal or Family History: A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption or marriage or was intimately associated with the other's family to be likely to have accurate information concerning the matter declared.

(d) Document Exceptions. The Declarant need not be available at trial for admission of the following hearsay exceptions.

[See Tribal case law for precedent. FRE 803 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(1) Recorded Recollection: A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(2) Business Records; Official Records; Ancient Documents; Learned Treatises: (A) A writing made in the regular course of business; (B) public records and reports of any form, of public or tribal offices or agencies, birth records, deaths, marriages; (C) statements in a document in existence twenty years or more the authenticity of which is established; (D) statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by expert testimony or judicial notice

[See Tribal case law for precedent. FRE 803 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(e) Other exceptions. A statement not specifically covered by any of the foregoing exceptions is admissible if it is necessary and has the requisite indices of trustworthiness such that it should be allowed in.

[See Tribal case law for precedent. FRE 803 (24; 804(5), may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Witnesses Testimony

2.5.13 Oath

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered by the Court

[See Tribal case law for precedent. FRE 603 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.14 Preliminary Questions:

(a) Questions of Admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination the court is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of Jury. Hearings on the admissibility of confessions shall be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or when an accused is a witness and so requests.

(d) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

[See Tribal case law for precedent. FRE 104 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(e) Weight and Credibility. This rule does not limit the right of a party to introduce before the trier of fact evidence relevant to weight and credibility.

[See Tribal case law for precedent. FRE 104 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.15 Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and, if seated, instruct the jury accordingly.

[See Tribal case law for precedent. FRE 105 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

[See Tribal case law for precedent. FRE 106 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.16 Judicial Notice of Adjudicative Facts

A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(a) The Court may take judicial notice of an adjudicative fact whether requested or not. The Court shall take judicial notice if requested by a party and supplied with the necessary information. Judicial notice may be taken at any stage of the proceeding. In a civil action or proceeding, the Court shall instruct a jury, if seated, to accept any fact judicially noticed.

(b) A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice of an adjudicative fact and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

[See Tribal case law for precedent. FRE 201 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.17 Competency of Judge; Juror as Witness

The judge presiding at the trial may not testify in that trial as a witness. A member of the jury may not testify as a witness, and may not testify as to any matter or statement during the course of the jury's deliberations or to any other juror's mind or emotions concerning the juror's mental processes in connection therewith, as influencing the juror to assent to or dissent from the verdict. A juror may testify on the question whether extraneous prejudicial information was properly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.

[See Tribal case law for precedent. FRE 605; 606, may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Presenting Evidence

2.5.18 Mode and Order of Interrogation and Presentation

(a) Control of Court. The court shall exercise reasonable control over the mode and order of questioning witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

[See Tribal case law for precedent. FRE 611 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(b) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may in the exercise of discretion, permit inquiry into the additional matters as if on direct examination.

(c) Leading Questions. Leading questions should not be used on the direct examination of witnesses except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

2.5.19 Calling and Interrogation of Witnesses

(a) Calling by Court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by Court. The court may interrogate witnesses, whether called by itself or by a party.

(c) Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when a jury if seated, is not present.

2.5.20 Writing Used to Refresh Memory

If a person uses a writing to refresh memory for the purpose of testifying, either while testifying or before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed the writing contains matters not related to the subject matter of the testimony, the court shall examine and excise any portions not so related and order delivery to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule the court shall make any order justice requires including striking the testimony of the witness.

[See Tribal case law for precedent. FRE 612 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.21 Prior Statements of Witnesses

(a) In examining a witness concerning a prior statement made by a witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

[See Tribal case law for precedent. FRE 613 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(b) Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions by a party opponent.

[See Section 2.5.12 et seq. FRE 614 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.22 Who May Impeach. The credibility of a witness may be attacked by any party, including the party calling the witness.

[See Tribal case law for precedent. FRE 607 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.23 Evidence of Character and Conduct of Witness

(a) The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

[See Tribal case law for precedent. FRE 608 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(b) Evidence that a person other than the accused has been convicted of a crime shall be admitted if the crime was punishable by death or imprisonment by more than one year and if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused, or if the crime involved dishonesty or false statement, regardless of the punishment. Evidence of a conviction is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from confinement imposed for that conviction, whichever is the later date, unless the court determines in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

2.5.24 Impeachment by Evidence of Conviction of a Crime

(a) General Rule. For the purpose of attacking the credibility of a witness (1) evidence that a witness other than the accused has been convicted of a crime shall be admitted, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted , and such evidence shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) Time limit. Evidence of conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. Such evidence is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of conviction is not admissible under this rule if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications. Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult.

[See Tribal case law for precedent. FRE 609 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Rulings on Evidence

2.5.25 Rulings on Evidence

(a) Effect of Erroneous Ruling. Evidence may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or (2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it is offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions before the jury.

(d) Plain Error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

[See Tribal case law for precedent. FRE 103 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Chapter 6
Appeals

2.6.01 Appeals

(a) Within twenty (20) days from the entry of a final judgment, or judgment on a dispositive motion, a party dissatisfied with the judgment may file a notice of appeal with this court.

(b) The Tribal Court may require the Appellant to post a cost bond in an amount which will secure the cost of appeal

(1) Disposition of Bond. After the Court of Appeal has issued its opinion, it shall upon the motion of any party or upon its own motion order such disposition of any appeal bond which may have been posted as deemed just and consistent with these rules.

(2) If security is given in the form of a bond or stipulation or other undertaking with one or more sureties each surety submits itself to the jurisdiction of the Hoopa Valley Tribal Court of Appeal and irrevocably appoints the Clerk of the Court as its agent upon whom any papers affecting its liability on the bond or undertaking may be served. The sureties' liability may be enforced on motion.

(3) The Hoopa Valley Tribal shall not be required to post any bonds.

(c) Serving the Notice of Appeal. The Court Clerk shall serve notice of the filing of a notice of appeal by mailing a copy to each party. The Clerk shall send a copy of the notice to the Hoopa Valley Court of Appeals.

(d) Filing Fee. The filing fee for appeals of Tribal Court decisions shall be $150.00. The Hoopa Valley Tribe shall not be required to pay any filing fees.

(e) Composition of the Hoopa Valley Tribal Court appellate panels

(1) The appellate panel shall be comprised of and appointed pursuant to Hoopa Valley Tribal Code section 1.4.02.

(2) The matter shall be heard by justices appointed and impaneled in the Hoopa Valley Tribal Court of Appeals. The Hoopa Valley Court of Appeals may hear the matter or if there is not a standing Hoopa Valley Court of Appeals a court system contracted with by the Hoopa Valley Tribal Council may hear the matter.

(f) All travel and per diem costs shall be borne by the litigants. Attorney fees and costs incurred to prosecute or defend an appeal may be awarded by the Appellate Court to the prevailing party. The Hoopa Valley Tribal Court and the Appellate Court shall have no jurisdiction at any time, whether it is at the trial court or appellate court level to award

any costs or attorney fees against the Hoopa Valley Tribe at any time, unless the tribe has expressly and specifically waived its sovereign immunity for such awards described in this section according to the language of 1 HVTC 1.1.04(e)

2.6.02 Appeal as of Right

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from the Hoopa Valley Tribal Court of Appeals may be taken only by filing a notice of appeal with the Hoopa Valley Tribal Court within the time frame specified in 2 HVTC § 2.6.01(a). Failure to appeal within that timeframe shall constitute a dismissal of the claim.

(b) Contents of the Notice of Appeal

(1) The notice of appeal must;

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants,","the plaintiffs A, B. et. al.,"" or all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken

(2) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(c) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order, but before the entry of the judgment or order is treated as filed on the date of and after the entry.

[See Tribal case law for precedent. Fed. R. App P. 3 and 4 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Chapter 7
Miscellaneous

2.7.01 Savings Clause

If any provision of this Title is declared to be invalid, the remaining provisions shall not be affected.

2.7.02 Recording of Hoopa Valley Tribal Court Proceedings

All proceedings before the Hoopa Valley Tribal Court shall be recorded in a manner that accurately preserves the courts evidentiary and testimonial record. The use of an electronic recording device may be used to record Hoopa Valley Tribal Court proceedings. Prior to any electronic recording device being used, the Court shall ensure that is working properly. Upon the application of any Party or upon the Court's motion, the Court may authorize the use of a certified court reporter to record an action or proceeding. Any application by a Party under this

section shall be made by motion no later than 20 days prior to the scheduled date of the hearing. The Hoopa Valley Tribal Court shall have under contract and budgeted for in the court's budget a certified court reporter ready and able to record court proceedings. The Hoopa Valley Tribal Court in granting or denying a motion for a court reporter must base the decision upon the information presented by the motions, the Court's current understanding of the of the matter, the potential for witnesses and exhibits, the potential amount of damages and relief requested, and the chances of an appeal in order to determine whether both parties interests will be protected by ensuring an accurate evidentiary and testimonial record. The Hoopa Valley Tribal Court shall not require the parties to pay for the use of a court reporter.

(a) All actions brought under 1 H.V.T.C § 1.1.04(f) shall be recorded by a certified court reporter. The Parties to an action brought under 1 H.V.T.C. § 1.1.04(f) may agree to waive the use of a certified court reporter during any preliminary proceedings and in such case the use of an electronic recording device shall record the preliminary proceedings.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council so certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which six (6) members were present, constituting a quorum, at a regular meeting thereof; duly and regularly called, noticed, convened and held this eleventh day of April, 2005; and that this Ordinance was adopted by a vote of five (5) for, zero (0) opposed, and zero (0) abstaining; and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

DATED THIS 11TH DAY OF APRIL, 2005.

_____
Clifford Lyle Marshall, Chairman
Hoopa Valley Tribal Council

ATTEST: _____
Darcy Miller, Executive Secretary
Hoopa Valley Tribal Council